IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

MONDAY, THE 11TH DECEMBER 2006 / 20TH AGRAHAYANA 1928

CRP.No. 2826 of 2001()

AGAINST THE ORDER DATED 12/06/2001 IN IA. 1550 /2001 IN OS.429/2001 of PRL.M.C., KOTTAYAM

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REVN. PETITIONER: PETITIONER

P.K.KUNJU PENNU, PANACHIKUNNEL HOUSE,
KURUMULLOOR KARA, KANAKKARY VILLAGE,
KOTTAYAM TALUK.

BY ADV. SRI.M.P.MADHAVANKUTTY

RESPONDENTS:

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1. **K.G.YOHANAN, KIZHAKKEPARAMBIL HOUSE,**
MUTTAMBALAM P.O., MANGANAM KARA
MUTTAMBALAM VILLAGE, KOTTAYAM TALUK.

* 2. **P.M.MATHAI, KOLLASSERIYIL,**
VADAVATHOOR P.O., KOTTAYAM.(DELETED)

* 3. **ALEYAMMA (THANKAMMA),**
PUTHENPURAYIL, MADHURAMVELI P.O.,
AYAMKUDY, KOTTAYAM . (DELETED)

* 4. **MRYKUTTY, PUTHENPARAMBIL,**
KURUPPUMTHARA, KOTTAYAM. (DELETED)

* **THE NAME OF RESPONDENTS 2 TO 4 ARE DELETED FROM THE PARTY ARRAY AT THE RISK OF THE PETITIONER AS PER ORDER DT.11.12.06 ON IA. 3438/06.**

BY ADV. SRI.M.NARENDRA KUMAR

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 11/12/2006, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

M.SASIDHARAN NAMBIAR, J.

C.R.P.NO.2826 OF 2001 (F)

Dated this the 11 th day of December, 2006.

JUDGMENT

Petitioner is first defendant and respondents are plaintiffs in O.S.429/01on the file of Munsiff Court, Kottayam. Petitioner is challenging the order passed by learned Munsiff in I.A.1550/01 where under respondents were granted permission to withdraw the suit with a liberty to file a fresh suit. Case of petitioners is that there is no sufficient cause to withdraw the suit and the fact that the plaint allegations are vague or that additional relief are to be introduced are not valid or sufficient ground to grant permission to file a fresh suit and therefore the order is to be set aside.

2. Learned counsel appearing for petitioner relying on the decision of this court in *Haji.P.Abdul Rahiman & others v. Dr.K.P.Narayanan* (1997 (1) KLJ 161) argued that permission granted by the court cannot be made as a weapon in the hands of cantankerous litigant to harass the opposite party by abusing the court and the fact that additional reliefs or additional contentions are to be added in that plaint is not a ground to grant permission to withdraw

the suit. The argument of the learned counsel is that those defects could be cured by amending the plaint and therefore court should not have allowed the application. Learned Munsiff also relied on the decision of Apex court in *Deena v. Bharat Singh* (2002(6) SCC 336) to support the said contention.

3. Order XXIII Rule 1 enables the plaintiff to withdraw the suit with liberty to file fresh suit on satisfying the conditions provided therein. If there is formal defect or there are other sufficient grounds to the satisfaction of the trial court, the court is competent to grant permission to withdraw the suit with liberty to file a fresh suit. Case of respondents/plaintiffs is that additional reliefs are to be sought and the plaint allegations are not sufficient to get the decree sought for and therefore permission was sought to institute a fresh suit. Learned Munsiff was satisfied that there are sufficient grounds to grant permission to institute a fresh suit, after withdrawing the present suit. Argument of learned counsel appearing for petitioner was that if the permission granted by learned Munsiff is upheld, plaintiff could cure the defect in the plaint as the plaint did not disclose the date on which de-

fendants refused to perform the agreement and this details would be amendment that could be added in the plaint and petitioner would be prejudiced and therefore permission should not have been granted.

4. The plea available to the respondent will not be lost even if plaintiff introduce the plea in the next suit. Learned Munsiff on the facts found that there are sufficient reasons to grant permission sought for. Even according to petitioner the plaint as such will not enable respondent to get the decree sought for. The argument of the learned counsel appearing for petitioner was that the plaintiff can amend the plaint. It is to avoid this complication, with liberty to file a fresh suit, learned Munsiff exercised the discretion vested in it. I do not find any infirmity in that order to be interfered in exercise of the revisional jurisdiction of this court under section 115 of the code of civil procedure. It is especially so when it is admitted that respondent had already instituted a fresh suit and it is pending. Petition dismissed.

M.SASIDHARAN NAMBIAR,
JUDGE.

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